IN THE MATTER OF:

ALDERLEY EDGE ALLOTMENTS

ADVICE	
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INTRODUCTION

- 1. I am instructed on behalf of Alderley Edge Parish Council ('AEPC') in relation to the Heyes Lane allotment site which it holds on a long lease from Cheshire East Council ('CEC'). AEPC wish to change the use of the site, and require advice as to whether it is necessary to obtain the Secretary of State's consent for the same.
- 2. The answer to this question turns on the application of s. 8 of the Allotments Act 1925.
- 3. I provided some initial advice on this matter by email on 18 September 2014. I have now been asked to set out my view more formally.

FACTUAL BACKGROUND

- 4. The Heyes Lane site was originally acquired by way of gift to the Alderley Edge Urban District Council (the predecessor authority to AEPC). The copy of title register entries refers to a deed of gift dated 20 February 1950.
- 5. The site has since passed into the ownership of CEC. This was most likely due to local government reorganisation. Alderley Edge UDC was merged with other UDCs to form Macclesfield Borough Council in 1974, and Macclesfield BC certainly owned the site by 3 December 1976: this is the date of a tenancy agreement between Macclesfield BC and Alderley Edge Allotments and Gardens Society.
- 6. The ownership of the Heyes Lane site would have passed to CEC upon creation of the unitary authority in April 2009. This is consistent with the title register, which records that CEC were registered as freehold owners on 29 April 2009.
- 7. On 28 March 2013, CEC granted a 125 year lease over the Heyes Lane site to AEPC. I am told that this was part of CEC's agenda of transferring assets for local management. By way of consideration, AEPC was to pay a premium to be £1 (although I understand this was never

demanded or paid) and yearly rent of one peppercorn. I have not seen an up-to-date copy of the title register, but assume that this lease was registered.

8. It appears from an email dated 4 March 2014 that AEPC now wish to use the Heyes Lane site for a different purpose. I assume that this would involve an appropriation under s. 126(1) Local Government Act 1972.¹

RELEVANT STATUTORY PROVISIONS AND THE SNELLING JUDGMENT

9. A small amount of allotment land is held by local authorities as a result of statutory vesting under the Local Government Act 1894 and s. 33 of the 1908 Act. However, the majority of allotment land now held by local authorities was acquired through the exercise of specific powers, primarily s. 25 Smallholdings and Allotments Act 1908:

"25.— Acquisition of land for purpose of Act.

- (1) The Council of a borough, urban district, or parish may, for the purpose of providing allotments, by agreement purchase or take on lease land, whether situate within or without their borough, district, or parish or may purchase such land compulsorily in accordance with the provisions of this Act and of the Acquisition of Land Act 1981, in that behalf."
- 10. The statutory scheme provides two powers for local authorities to dispose of allotment land held by them. The first is s. 8 of the Allotments Act 1925, which states:

"8. Sale, &c., of land used as allotments

Where a local authority has purchased or appropriated land for use as allotments the local authority shall not sell, appropriate, use, or dispose of the land for any purpose other than use for allotments without the consent of the Minister of Agriculture and Fisheries² and such consent may be given unconditionally or subject to such conditions as the Minister thinks fit, but shall not be given unless the Minister is satisfied that adequate provision will be made for allotment holders displaced by the action of the local authority or that such provision is unnecessary or not reasonably practicable."

11. The second power of sale is contained in s. 32 of the Smallholdings and Allotments Act 1908:

"32.— Sale of superfluous or unsuitable land.

¹ "Any land belonging to a parish or community council which is not required for the purposes for which it was acquired or has since been appropriated may, subject to the following provisions of this section, be appropriated by the council for any other purpose for which the council are authorised by this or any other public general Act to acquire land by agreement."

² The powers of the Minister of Agriculture and Fisheries are now exercised by the Secretary of State for Communities and Local Government.

- (1) Where the council of any borough, urban district, or parish are of opinion that any land acquired by them for allotments or any part thereof is not needed for the purpose of allotments, or that some more suitable land is available, they may sell or let such land otherwise than under the provisions of this Act, or exchange the land for other land more suitable for allotments, and may pay or receive money for equality of exchange.
- (2) The proceeds of a sale under this Act of land acquired for allotments, and any money received by the council on any such exchange as aforesaid by way of equality of exchange, shall be applied in discharging, either by way of a sinking fund or otherwise, the debts and liabilities of the council in respect of the land acquired by the council for allotments, or in acquiring, adapting, and improving other land for allotments, and any surplus remaining may be applied for any purpose for which capital money may be applied; and the interest thereon (if any) and any money received from the letting of the land may be applied in acquiring other land for allotments, or shall be applied in like manner as receipts from allotments under this Act are applicable."
- 12. As originally drafted, s. 32 required parish councils to obtain the 'sanction of the county council' before any sale/lease/exchange; but s. 8 stated that county council consent did not have to be obtained where Ministerial consent was granted. Today, local authorities are not required to obtain consent before disposing of allotment land under s. 32, but the Secretary of State's consent is still required under s. 8.
- 13. The interrelationship between s. 32 and s. 8 was considered in the case of <u>Snelling v Burstow</u>

 Parish Council [2013] 1 WLR 2271 (High Court): [2014] 1 WLR 2388 (Court of Appeal).
- 14. The High Court held that s. 8 was an ancillary provision supplementing the power of sale in s. 32. Although it only explicitly referred to land which had been purchased or appropriated; it was to be interpreted as applying to land acquired by the exercise of any other power under the 1908 Act (e.g. land taken on lease or purchased compulsorily under s. 25), or by the operation of s.33(4) (statutory vesting). The practical effect of this decision was to require the Secretary of State's consent to be obtained whenever it was proposed to dispose of/appropriate any allotment land, however acquired.
- 15. The Court of Appeal disagreed with this interpretation of s. 8. The original references to county council consent in s. 32 and s. 8 were important in this regard. Patten LJ said:

"The difficulty which I have with the judge's wide construction of the word "purchased" in section 8 of the 1925 Act is that if it was truly the intention of Parliament that section 8 should operate in every case then the provisions of section 32 of the 1908 Act became completely redundant in so far as they required consent by the county council. The provisions of section 8 of the 1925 Act which obviate the need to obtain the consent of

the county council where ministerial consent is obtained only make sense if the latter is not a requirement in every case. There must therefore be a category of cases which fall within section 32 of the 1908 Act but where section 8 of the 1925 Act has no application.

The concluding words of section 8 of the 1925 Act are, in my view, consistent with the word "purchased" being given its ordinary meaning and not an extended meaning of "acquired". It is, I think, significant that section 32(1) of the 1908 Act uses the word "acquired" but the draftsman of the 1925 Act has not followed suit. Since the word "purchased" can be given a meaning which both accords with the terms of section 25(1) of the 1908 Act and is consistent with the drafting of section 8 of the 1925 Act, I decline to give it a wider meaning. In my judgment, section 8 of the 1925 Act has no application to the sale in this case and the minister's consent was unnecessary."

16. The Court of Appeal therefore considered that a narrower interpretation of s. 8 was appropriate. The requirement to obtain the Secretary of State's consent does not apply whenever a disposal or appropriation of allotment land is proposed, regardless of how the land was acquired by the local authority. It only applies to those allotments which have actually been acquired by purchase or appropriation.

APPLICATION OF THE LAW TO THIS CASE

- 17. In my view the Court of Appeal judgment in <u>Snelling</u> is clear authority for the proposition that s. 8 does not apply to allotment land acquired by a parish council on a lease and does not therefore apply to the proposed appropriation of the Heyes Lane site.
- 18. Whilst it would have been arguable that s. 8 applied under the High Court's interpretation of the word 'purchased'; that was rejected by the Court of Appeal. The position is now that the word 'purchased' is to be given its ordinary meaning, consistent with the use of the word in s. 25(1) of the 1908 Act, rather than the extended meaning of 'acquired'.
- 19. The Court's reference to s. 25(1) is of particular importance in this case. The section was drafted in such a way as to make a distinction between the acquisition of land for allotments by 'purchase' and 'taking on lease'. It is clear that Parliament was referring to two <u>different</u> ways of acquiring land for use as allotments. <u>Snelling</u> tells us that s. 8 only applies to land actually 'purchased' for use as allotments and that this is consistent with the use of the word in s. 25. It must follow that s. 8 does not apply to allotment land like the Heyes Lane site, which was taken on lease.

- 20. To interpret s. 8 otherwise would be to reinstate the extended meaning of the word which was rejected by the Court of Appeal, and would be inconsistent with the actual words used in s. 25 and s. 8 respectively.
- 21. It is of course true that, in common parlance, we sometimes use the concept of 'purchasing' or 'buying' to refer to land on a long lease. A person might speak of 'buying' a flat, when actually he is buying a leasehold interest. It is also true that very long leases are often viewed as equivalent to freehold interests for all practical purposes. However, in law the two are clearly different and, as already indicated, I am of the view that the legislation does and was intended to draw a clear distinction between a lease and a 'purchase'. In my opinion, 'purchase' in this context refers to the acquisition of the freehold interest.
- 22. Whilst the agreement dated 28 March 2013 does refer to a 'sale' and to the land being 'sold'; the actual substance of the documents clearly indicates that the Heyes Lane site was taken on lease. This is plain from the reservation of various rights to the landlord (CEC); the inclusion of a forfeiture clause; the imposition of obligations on the tenant (AEPC); the requirement to register the lease; and the provision of a rent. These are all inconsistent with an outright 'purchase' of the land, and consistent with the taking of land on a lease.

CONCLUSION

- 23. In light of the approach taken by the Court of Appeal in <u>Snelling</u>, and bearing in mind the way in which s. 25 is drafted, I am of the clear view that the appropriation of the Heyes Lane allotment site to another use will not require the consent of the Secretary of State under s. 8. AEPC did not 'purchase' the site for use as allotments within the meaning of s. 8 (nor did it acquire the land through appropriation from another use).
- 24. Even if one considers the original creation of the Heyes Lane allotments in 1950, the evidence is that the land was acquired by a deed of gift. It appears to have since passed through statutory vesting. At no point has the land been 'purchased' by a local authority within the meaning of s. 8.
- 25. In my view AEPC can proceed to appropriate the Heyes Lane site to a different use in accordance with s. 126 Local Government Act 1971.

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